

**NEW JERSEY COMMISSION
TO REVIEW
CRIMINAL SENTENCING**



**FIRST INTERIM REPORT
TO THE
GOVERNOR AND LEGISLATURE**

JANUARY 2005



STATE OF NEW JERSEY

Richard J. Codey
Acting Governor

NEW JERSEY COMMISSION TO REVIEW CRIMINAL SENTENCING

Hon. Barnett E. Hoffman, Chair
Public Member

Hon. Peter C. Harvey
Attorney General of New Jersey

Hon. Yvonne Smith Segars, Vice Chair
Public Defender of New Jersey

Hon. Gordon M. Johnson
Assemblyman, District 27

Hon. Robert D. Bernardi
President, New Jersey Prosecutor's Ass'n.

Hon. Bernard F. Kenny, Jr.
Senator, District 33

Hon. Anthony R. Bucco
Senator, District 25

Richard S. Lehigh, Esq.
New Jersey Bar Ass'n. President Designee

Hon. Devon Brown
New Jersey Commissioner of Corrections

Alberto Rivas, Esq.
Public Member

Hon. Michael Patrick Carroll
Assemblyman, District 25

Hon. Edwin H. Stern, P.J.A.D.
Designee of the Chief Justice of the
Supreme Court of New Jersey

Hon. John D'Amico
Chairman, New Jersey State Parole Board

Zulima V. Farber, Esq.
Public Member

Bruce D. Stout, Ph.D.
Public Member

COMMISSION STAFF

Deputy Attorney General Ben Barlyn
Executive Director

When the Commission to Review Criminal Sentencing (hereinafter “the Commission”) was created in January 2004, New Jersey’s Legislature made certain that a deliberative body composed of key constituents of the criminal justice system would promote sound sentencing policy predicated on the basic precepts of public safety, proportionality and fairness. The Commission’s establishment is a timely one, as New Jersey prepares to address numerous current and prospective challenges to its sentencing scheme and penal system.

One conspicuous example is a decision, Blakely v. Washington, issued by the United States Supreme Court this past summer. This opinion may well unsettle the foundational components of sentencing practice in New Jersey that have stood largely unchanged since the advent of the Code of Criminal Justice (hereinafter “the Code”) in 1979. Indeed, one panel of the New Jersey’s Appellate Division has recently concluded that a key sentencing provision of the Code is constitutionally infirm under the Blakely decision. It is anticipated that the Supreme Court of New Jersey will address Blakely’s impact on New Jersey’s sentencing scheme this term.

Notably, entities in other states with mandates similar or identical to New Jersey’s Commission are now actively assisting their respective jurisdictions in fashioning appropriate responses to the Blakely decision. These commissions have also been steering efforts to address the consequences of burgeoning prison populations in their states. Despite declines in the last five years, New Jersey’s prison population has grown significantly. According to the U.S. Justice Department’s Bureau of Justice Statistics, for example, New Jersey’s prison population increased 375 percent between 1980 and 2003. According to statistics generated in 2002, less than half of New Jersey’s prison inmates – 46 percent – were serving sentences imposed for the commission of violent crimes.

Against this backdrop, during the first year of its existence, the Commission has been engaged in the task of organizing itself into an entity capable of fulfilling its mandate. At the outset, this entailed the appointment of the fifteen members designated by the Legislature to serve on the Commission. These members are: Senator Anthony R.

Bucco, Burlington County Prosecutor Robert D. Bernardi, New Jersey Commissioner of Corrections Devon Brown, Assemblyman Michael P. Carroll, Parole Board Chairman John D' Amico, Zulima Farber, Esq., New Jersey Attorney General Peter C. Harvey, retired judge Barnett E. Hoffman, Assemblyman Gordon M. Johnson, Senator Bernard F. Kenny, Jr., Richard S. Lehrich, Esq., Alberto Rivas, Esq., New Jersey Public Defender Yvonne Smith Segars, Judge Edwin H. Stern, P.J.A.D., and Bruce D. Stout, Ph.D.

Because of the time it took to organize the Commission and designate representatives, the first meeting was not held until July 2004. At that meeting, Judge Hoffman and Public Defender Segars were selected to serve as, respectively, the Commission's chair and vice-chair. In October 2004, the Commission selected an experienced attorney, Deputy Attorney General Ben Barlyn, to serve as its full-time executive director. Shortly thereafter, the Commission acquired much-needed office space and other necessary resources to facilitate its work. Hence, the Commission was not able to commence substantive deliberations until the fall of 2004.

By December 2004, however, the Commission had laid the necessary groundwork that would allow it to focus exclusively on its assigned task of "reviewing fairness and proportionality of new criminal offenses and enhanced penalties" added to the Code. In furtherance of its mission, the Commission established five committees to address key areas of interest: 1) Data Collection and Analysis; 2) Drug Policy; 3) Alternatives to Incarceration and Community Corrections; 4) Reentry: Corrections and Parole, and 5) Sentencing Policy. To avoid duplicative efforts, the Commission determined that where there is subject overlap, the committees will address complementary aspects of the same focus area. The committees plan to convene on a regular basis to conduct their work.

The Commission is also committed to basing its policy recommendations upon scrupulous and comprehensive data collection and analysis. To accomplish this objective, the Data Collection and Analysis committee is presently developing the capacity to provide the Commission with accurate descriptive information about current sentencing practice and to develop the capacity to empirically model the impact of alternative sentencing policies that the Commission might

entertain. It was concluded that the best strategy for developing this capacity was to conduct two separate mergers of selected information from two databases – Promis/Gavel and Computerized Criminal History (CCH). All components of the criminal justice system represented on the Commission are cooperating in this endeavor.

The first merger of information will be for a recent twelve-month period and will provide timely descriptive information about offender instant and prior conviction offense(s) and complete instant sentencing information. The second merger will employ the same processing technology, but will be based on imprisoned offenders released from custody and will include actual length-of-time served data, in addition to data on the sentence imposed derived from the Department of Corrections' OBCIS database.

In addition, the Commission convened a one-day retreat on December 7, 2004, for all members sponsored in conjunction with the Vera Institute's State Sentencing and Corrections Program. The purpose of the retreat was to provide a forum in which the members could reach consensus on the direction of its upcoming work, particularly the prioritization of policy areas that will be the focus of the Commission's efforts.

The retreat commenced with a presentation on national sentencing trends, including state policy responses to budget constraints and prison overcrowding. Thereafter, three Vera associates – two state sentencing commission directors and one career prosecutor assigned to her state's sentencing commission -- provided valuable historical overviews of their commissions, emphasizing in particular the processes relied upon for formulating and implementing successful policy change. In addition, the three Vera associates offered cogent perspective and commentary in response to discussion among the Commission members regarding the delineation and prioritization of issues to be addressed. Most importantly, the retreat afforded the Commission an occasion to collectively give substantive content to the terms "fair and proportionate" employed by the Legislature in the enabling legislation. It is against these criteria, the foremost being the preservation of public safety and order, that all sentencing legislation will be assessed by the Commission.

In summary, we commend the Legislature and Executive Branch for their prescience by establishing an entity well-suited to guide both with regard to the profoundly changing landscape of sentencing law, practice and policy. Moreover, the Commission has progressed much since its inception to provide the Legislature and other “stakeholders” with the guidance necessary to promote a sentencing system that simultaneously protects public safety, fosters a greater degree of fairness, and provides meaningful and cost-effective responses to crime. The Commission is wholly committed to these efforts and plans to provide the blue print that will reshape and improve the State’s sentencing scheme and penal system.